

## **REMARKS**

### **Status of the Claims**

Claims 1-42 are pending in this application.

Claims 1-21, 23-25 and 27-41 currently under examination, stand rejected.

Claims 21, 36, 37 and 40 are amended herein to correct typographical errors.

### **Claim Rejections**

#### **35 U.S.C. §103(a)**

The Examiner has rejected claims 1-7, 23-25 and 27-34 under 35 U.S.C. § 103(a) as allegedly obvious over Beerse et al. (U.S. Patent No. 6,294,186), in view of Duennenberger et al. (U.S. Patent No. 3,708,527), Perricone (U.S. Patent No. 6,743,433), and Wiegand et al. (U.S. Patent Pub. 2002/0151527). Applicants traverse this rejection.

The Examiner contends that the claimed method of treating enlarged pores with halo-salicylic acid is obvious because “treating acne with halogen substituted salicylic acid” is allegedly “an old and well know method,” the practice of which the Examiner alleges would inherently reduce pore size because enlarged pores are “associated with acne.” This argument is without factual or legal basis.

While Applicants disagree with the Examiner’s statement that “treating acne with halogen substituted salicylic acid” is “an old and well know method,” and specifically traverse that contention, the rejection is fatally deficient because the Examiner relies on an improper standard of inherency. The Examiner has failed to establish that enlarged pores are “associated with acne,” let alone that enlarged pores are necessarily and invariably associated with acne. See Continental Can Co. USA v. Monsanto Co., 948 F.2d 1264, 1269 (Fed. Cir. 1991) (“Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”).

The Examiner continues to mischaracterize Perricone as allegedly teaching “that acne is associated with skin pore size and treatment of acne is also beneficial in reducing pore size.” The Examiner cites column 3, lines 15-25 of Perricone in support of this contention, which reads

in relevant part, “It is an objective of this invention to provide improved compositions and methods for the treatment of acne vulgaris, both during the active phase, and for acneform scars afterwards, and for the prevention of acne and pore size reduction.” When read in the context of the disclosure as a whole, there is nothing in this passage which establishes that enlarged pores are “associated” with acne or that “treatment of acne is also beneficial in reducing pore size.”

The lengthy discussion of the etiology and symptomology of acne contained in Perricone [col. 1, line 18–col. 2, line 67] makes no mention of enlarged pores. Indeed, Applicants fail to find any teaching in Perricone to support the Examiner’s contention that enlarged pores and acne are “associated” conditions. A complete reading of Perricone makes clear that reduction in pore size is not said to be related to the treatment of acne, but rather is an independent benefit of the disclosed alkanolamine compounds. Specifically, Perricone refers to “other beneficial alkanolamine effects” such as “visible contraction of skin pores,” for which his own earlier patent application, USSN 09/900,680 titled “Reduction of Skin Pore Size Using Alkanolamines” (“the Perricone ‘680 application”), is cited [col. 11, lines 29-39]. A review of the Perricone ‘680 application (published as U.S. Patent Pub. 2003/0017177) reveals that the alkanolamine compounds reduce pore size independent of their ability to treat acne because no mention of acne is made in that application. Thus, Perricone’s reference to “prevention of acne and pore size reduction” in the cited U.S. Patent No. 6,743,433, clearly does not imply that reduction in pore size is a consequence of treating acne, but rather reduction in pore size is a separate benefit of Perricone’s alkanolamine active ingredient.

In sum, Applicants respectfully submit that the Examiner has failed to make out a prima facie case of obviousness because even assuming arguendo that one skilled in the art would have been motivated to topically apply halosalicylic acids for the treatment of acne, the Examiner has not established that the affected area of skin would necessarily also suffer from enlarged pores. As such, the rejection is deficient and should be withdrawn.

Having distinguished the independent claims, Applicants submit that the claims dependent therefrom are patentable for at least the same reasons. However, Applicants reserve the right to separately address the patentability of the dependent claims in the future, should that be necessary.

**CONCLUSION**

Applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendments and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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